

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DONALD J. TRUMP and TRUMP
ORGANIZATION LLC,

Plaintiffs,

v.

Case No. 1:21-cv-1352 (BKS)(CFH)

LETITIA JAMES, in her official capacity
as Attorney General for the State of New
York,

Defendant.

**DECLARATION OF COLLEEN K. FAHERTY IN SUPPORT OF
DEFENDANT’S MOTION TO DISMISS THE COMPLAINT**

I, Colleen Kelly Faherty, an attorney duly admitted to practice law in this Court, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is correct:

1. I am an Assistant Attorney General in the Office of LETITIA JAMES, Attorney General of the State of New York, attorney for Defendant Letitia James, sued in her official capacity. I submit this declaration in support of Defendant’s Motion to Dismiss the Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

2. This declaration addresses information related to the New York State Office of the Attorney General’s (OAG) ongoing investigation into, *inter alia*, whether Plaintiffs Donald J. Trump and the Trump Organization, and various affiliated entities, had a practice of falsely inflating and deflating the value of Mr. Trump’s assets when it served their purposes, such as to secure loans and obtain economic and tax benefits (the “Investigation”). *See People v. The Trump Organization*, No. 451685/2020, 2020 WL 5775887, at *1 (Sup. Ct., N.Y Cty. Sept. 23, 2020),

modified on reargument, 2020 WL 5992323 (Sup. Ct., N.Y. Cty. Oct. 7, 2020), *further modified on reargument*, 2020 WL 7360811 (Sup. Ct., N.Y. Cty. Dec. 15, 2020). I submit this declaration based upon personal knowledge and my review of documents and records in possession of OAG, where I am employed and for which I am an Assistant Attorney General participating in the Investigation.

3. OAG opened the Investigation in March 2019, following the Congressional testimony of Michael Cohen (on February 27, 2019), in which Cohen produced copies of Donald J. Trump's financial statements for years 2011-2013 and testified that the financial statements inflated the values of Mr. Trump's assets to obtain favorable terms for loans and insurance coverage, while also deflating assets in order to reduce any associated real estate taxes. OAG subsequently determined that the financial statements were provided to financial institutions, and thus issued dozens of subpoenas for documents and testimony to investigate whether such submissions were a violation of law.

4. Since August 24, 2020, OAG has been engaged in ongoing aspects of a special proceeding before Justice Arthur Engoron of the New York Supreme Court, New York County, regarding certain subpoena enforcement issues that have arisen during the course of the Investigation *entitled People v. The Trump Organization*, Index No. 451685/2020 (the "NY Proceeding").

5. Whereas Justice Engoron expressed his willingness to make himself "available to resolve matters as they have arisen among the parties" in the NY Proceeding, after disputes arose "regarding the Trump Organization's document collection and production in response to OAG subpoenas," the Trump Organization and OAG stipulated on September 2, 2021, to certain terms concerning the company's ongoing subpoena responses, as well as the need to "retain at [the

Trump Organization's] expense, an independent third-party e-discovery firm...to oversee the identification, collection, and review of electronically stored information...responsive to OAG's subpoenas." *See infra*, ¶ 10(g). The Trump Organization subsequently complied with the request to retain a third party eDiscovery firm.

6. Similarly, based on the New York Supreme Court's willingness to retain jurisdiction over the NY Proceeding, on December 30, 2021, counsel for Donald J. Trump, Ivanka Trump, and Donald Trump, Jr. stipulated to appear in the NY Proceeding before Justice Engoron in order to "make any motion to quash [subpoenas issued to Donald J. Trump, Ivanka Trump, and Donald Trump, Jr.] or for related relief." Justice Engoron "so ordered" the stipulation on January 3, 2022. *People v. The Trump Organization*, Index No. 451685/2020 at NYSCEF docket number 318. A true and correct copy of that stipulation is attached hereto as "Exhibit A."

7. All of the OAG attorneys primarily responsible for work conducted on the Investigation are based out of the New York City office of OAG, located at 28 Liberty Street, New York, NY. Based on my search of the relevant firm biographical information for counsel for the various Trump-related parties in this action and the NY Proceeding, the following attorneys have appeared in the NY Proceeding for those parties associated with office locations as follows:

- a. Alina Habba (*Attorney for NDNY Plaintiffs Donald J. Trump and Trump Organization LLC*) – Habba Madaio & Associates LLP, 1430 U.S. Highway 206, Suite 240, Bedminster, NJ 07921; and 112 West 34th St., 17th & 18th floors, New York, NY 10120;
- b. Ronald P. Fischetti (*Attorney for NY Proceeding respondent Donald J. Trump*) – Fischetti & Malgieri LLP, 565 5th Ave., 7th floor, New York, NY;
- c. Lawrence Rosen & Amy Carlin (*Attorney for NY Proceeding respondents Trump Organization, Inc., DJT Holdings LLC, DJT Holdings Managing Member LLC*) – LaRocca Hornik Rosen & Greenberg LLP, 40 Wall Street, 42nd floor, New York, NY; and

- d. Alan Futerfas (*Attorney for NY Proceeding respondents Ivanka Trump and Donald Trump, Jr.*) – Law Offices of Alan S. Futerfas, 565 5th Ave., 7th floor, New York, NY.

8. The relevant properties which have been included as the subject of the Investigation are not located in Syracuse, nor anywhere else within the jurisdiction of the Northern District of New York.

9. Based on information collected during the Investigation, OAG understands that Plaintiff Donald J. Trump is the beneficial owner of the collection of entities he styles the “Trump Organization.” According to required disclosures, from May 1, 1981 to January 19, 2017, Mr. Trump was Director, President, and Chairman of the Trump Organization, Inc. From at least July 15, 2015 until May 16, 2016, Mr. Trump was the sole owner of the Trump Organization, Inc. As of 2017, the Trump Organization, Inc. was wholly owned by DJT Holdings Managing Member LLC. On information and belief, Mr. Trump is the sole beneficiary of The Donald J. Trump Revocable Trust, a trust created and operating under the laws of New York that is the legal owner of the above entities.

10. I have attached hereto as exhibits true and correct copies of the following documents, excerpted where designated:

- a. Attached as “Exhibit B” - the excerpted hearing transcript as produced by the U.S. Government Publishing Office for the “Hearing with Michael Cohen, Former Attorney to President Donald Trump” before the Committee on Oversight and Reform, House of Representatives, One Hundred Sixteenth Congress, First Session; dated February 27, 2019, Serial No. 116-03.
- b. Attached as “Exhibit C” – the excerpted and redacted “Memorandum of Law of the Trump Organization, Inc., DJT Holdings LLC, DJT Holdings Managing Member LLC, Seven Springs, LLC, and Eric Trump in Opposition to the Office of the Attorney General’s Pe[t]ition and Motion to Compel Compliance with Investigatory Subpoenas” filed in the NY Proceeding; also available at *People v. The Trump Organization*, Index No. 451685/2020 NYSCEF docket number 237.

- c. Attached as “Exhibit D” - the stipulation and order signed by OAG and the Trump Organization and “so ordered” by Justice Arthur Engoron on September 2, 2021; also available at *People v. The Trump Organization*, Index No. 451685/2020 NYSCEF docket number 314.
 - d. Attached as “Exhibit E” – the excerpted and redacted “Memorandum of Law in Opposition to the Office of the Attorney General’s Motion for Leave to Reargue” filed in the NY Proceeding; also available at *People v. The Trump Organization*, Index No. 451685/2020 NYSCEF docket number 293.
 - e. Attached as “Exhibit F” - the September 23, 2020 excerpted hearing transcript from oral arguments in the NY Proceeding, before New York County, New York Supreme Court Justice Arthur Engoron.
 - f. Attached as “Exhibit G” - a November 1, 2021 letter written by OAG to the Trump Organization, invoking an “independent third-party e-discovery firm...to oversee the identification, collection, and review of electronically stored information...responsive to OAG’s subpoenas.”
 - g. Attached as “Exhibit H” - the “Memorandum of Law in Support of Respondents/Moving Parties Donald J. Trump, Donald J. Trump, Jr. and Ivanka Trump’s Motion to Quash [OAG’s] Subpoenas or, in the Alternative, to Stay Enforcement of the Subpoenas Pending Resolution of the Criminal Investigation” filed in the NY Proceeding; also available at NYSCEF docket number 354.
 - h. Attached as “Exhibit I” - OAG’s “Supplemental Verified Petition” filed in the NY Proceeding; also available at *People v. The Trump Organization*, Index No. 451685/2020 NYSCEF docket number 630.
 - i. Attached as “Exhibit J” - excerpted transcript testimony from the examination of Eric Trump, dated October 5, 2020.
11. New York Supreme Court Justice Engoron has scheduled February 17, 2022 for oral argument in the NY Proceeding on Donald J. Trump, Donald Trump, Jr., and Ivanka Trump’s motion to quash and OAG’s cross-motion to compel.

Dated: New York, New York
January 26, 2022

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Attorney General
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